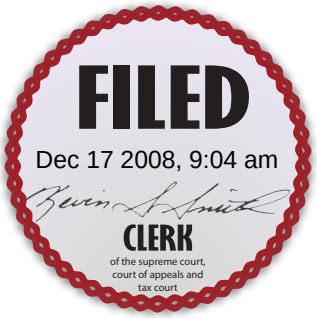

ATTORNEY FOR APPELLANT:

GREGORY PAUL KAUFFMAN
Bluffton, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

NICOLE M. SCHUSTER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

HUBERT RAY BRYANT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 90A05-0807-CR-387
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WELLS CIRCUIT COURT
The Honorable David Hanselman, Judge
Cause No. 90C01-0703-FD-15

December 17, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Hubert Ray Bryant appeals his conviction for Auto Theft,[1] a class D felony. Bryant was also determined to be a Habitual Offender. Upon appeal, Bryant presents two issues for our review:

1. Did the trial court err when it denied Bryant's motion for a directed verdict on the issue of venue?

2. Is the evidence sufficient to sustain Bryant's conviction?

We affirm.

The facts most favorable to the conviction reveal that Michael Meeks owned a blue, Chevy mini-van that he kept at a farmstead he rented near State Road 124 in Wells County. Meeks had recently put new tires on the mini-van and it was drivable. Around 9:00 a.m. on January 31, 2007, Meeks saw his van as he drove by his property. When Meeks returned between 3:00 and 4:00 that afternoon, the mini-van was missing. Meeks had not given anyone permission to use his mini-van, so he reported it stolen.

Keith Stinson testified that on January 31, 2007, he saw a blue mini-van similar to one owned by Meeks being towed on a trailer on 400 West State Road 124, approximately one-eighth of a mile from Meeks's farmstead. Karen Herick and her husband John Herick also encountered a blue mini-van being towed on top of a trailer on January 31, 2007. The Hericks were traveling on State Road 224 in Huntington County at approximately 1:30 or 1:45 p.m. when they came up behind the trailer carrying the mini-van. They both testified that the mini-van depicted in State's Exhibit 3 (a picture of Meeks's mini-van) was similar to the mini-van they saw on the trailer. After reading in the paper that Meeks's mini-van had

[1] Ind. Code Ann. § 35-43-4-2.5 (West, Premise through 2008 2nd Regular Sess.).

been stolen, John Herick contacted Meeks and told him to check the Huntington County junk yard.

Wells County Sheriff's Lieutenant Diane Betz investigated Meeks' stolen vehicle report. Lieutenant Betz located a blue mini-van at Clark's Inc., a metal salvage facility, in Huntington County on February 1, 2007. Lieutenant Betz confirmed that the blue mini-van belonged to Meeks by matching the VIN number on the mini-van with that provided by Meeks. Meeks also identified the van as his.

Timothy Craft was employed at Clark's on January 31, 2007. Craft testified that Bryant was a frequent customer, and on that day, he arrived at the salvage yard pulling a trailer with a blue mini-van on top. When Bryant brought the mini-van to the salvage yard, it was in good condition. The vehicle was later damaged by Clark's.

At Clark's, Bryant was required to fill out a Bill of Sale because he did not have title to the mini-van. Bryant then presented the Bill of Sale to Madeline Clark, another employee, and after weighing the vehicle, Madeline paid Bryant $152.00 cash for the mini-van. The cash ticket indicated that the transaction occurred on January 31, 2007 at 2:18 p.m. Craft testified that no other blue mini-vans were purchased by Clark's on January 31, 2007, and further identified Meeks's vehicle as the vehicle Bryant brought to the salvage yard on January 31.

On March 5, 2007, the State charged Bryant with auto theft as a class D felony. The State also filed an information alleging Bryant to be a habitual offender. A jury trial was held on February 14, 2008. The jury found Bryant guilty as charged. Bryant waived his right to have the jury hear the evidence on the habitual offender allegation, and on April 25, 2008,

the court determined Bryant to be a habitual offender. On May 9, 2008, the trial court sentenced Bryant to three years on the auto theft conviction and enhanced such sentence by four and one-half years for the habitual offender determination, for a total aggregate sentence of seven and one-half years.

1.

Bryant argues that the trial court erred in denying his motion for a directed verdict on the issue of venue. "In order for a trial court to grant a motion for a directed verdict, there must be a total lack of evidence on an essential element of the crime or the evidence must be without conflict and susceptible to only an inference in favor of the defendant's innocence." *Barrett v. State*, 634 N.E.2d 835, 837 (Ind. Ct. App. 1994). If the defendant challenges venue at the conclusion of the State's case, the issue becomes whether the State presented sufficient evidence that the defendant was tried in the proper county. *See Kindred v. State*, 540 N.E.2d 1161 (Ind. 1989), *abrogated in part on other grounds by Fajardo v. State*, 859 N.E.2d 1201 (Ind. 2007); *Smith v. State*, 835 N.E.2d 1072 (Ind. Ct. App. 2005). We review a claim of insufficient evidence of venue in the same manner as other sufficiency challenges. *Smith v. State*, 835 N.E.2d 1072. That is, we will not reweigh the evidence or reassess the credibility of the witnesses. *Id*. We will consider only the evidence and reasonable inferences therefrom that support the conclusion that venue was proper. *Id*.

Article 1, section 13 of the Indiana Constitution provides that a criminal defendant has the right to be tried in the county where the offense was committed. This principle is also embodied in Ind. Code Ann. § 35-32-2-1(a) (West, Premise through 2008 2nd Regular Sess.), which provides that "[c]riminal actions shall be tried in the county where the offense was

committed . . . ." Although the State is required to prove venue, venue is not an element of the offense. *Baugh v. State*, 801 N.E.2d 629 (Ind. 2004). Accordingly, the State need only establish venue by a preponderance of the evidence; venue need not be proven beyond a reasonable doubt. *Id.*

The basis of Bryant's claim that venue in Wells County was improper is that there was no evidence placing him in Wells County at the time or place Meeks's van was stolen. Venue may be established by circumstantial evidence. *Abran v. State*, 825 N.E.2d 384 (Ind. Ct. App. 2005), *trans. denied*. Here, it is undisputed that Meeks always kept his mini-van at his farmstead in Wells County. On the morning of January 31, Meeks saw the mini-van at his property in Wells County; that afternoon, however, the mini-van was gone. Although no one saw Bryant take the mini-van, several witnesses saw a mini-van similar to Meeks's being towed on a trailer. One witness observed the mini-van in tow one-eighth of a mile from Meeks's farmstead. In an appropriate timeframe, Bryant arrived at a salvage yard in Huntington County with Meeks's mini-van on a trailer towed behind his car. Reasonable inferences can be drawn from this evidence to establish by a preponderance of the evidence that Bryant stole Meeks's mini-van in Wells County. We therefore conclude that the trial court properly denied Bryant's motion for a directed verdict on the issue of venue.

2.

Bryant argues that the evidence is insufficient to support his conviction. Our standard of review for a challenge to sufficiency is well settled. When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder's exclusive province to weigh the evidence and therefore neither reweigh the evidence nor judge witness

credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the verdict, and "must affirm 'if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.'" *Id*. at 126 (*quoting Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

To convict Bryant of class D felony auto theft, the State was required to prove beyond a reasonable doubt that Byrant (1) knowingly or intentionally (2) exerted unauthorized control (3) over Meeks's vehicle (4) with the intent to deprive Meeks of the use or value thereof. *See* I.C. § 35-43-4-2.5. A conviction may be sustained by circumstantial evidence. "'Where circumstantial evidence is used to establish guilt, the question for the reviewing court is whether reasonable minds could reach the inferences drawn by the jury; if so, there is sufficient evidence.'" *Klaff v. State*, 884 N.E.2d 272, 274-75 (Ind. Ct. App. 2008) (quoting *Maxwell v. State*, 731 N.E.2d 459, 462 (Ind. Ct. App. 2000), *trans. denied*).

Generally, the unexplained possession of recently stolen property is sufficient to infer actual theft. *Buntin v. State*, 838 N.E.2d 1187 (Ind. Ct. App. 2005) (citing *Brown v. State*, 827 N.E.2d 149 (Ind. Ct. App. 2005)). Whether property was recently stolen is determined by examination of not only the length of time between the theft and the possession, but also circumstances such as the defendant's familiarity or proximity to the property at the time of the theft, as well as the character of the goods. *Buntin v. State*, 838 N.E.2d 1187. Where the length of time between the theft and the possession is short, that fact itself makes the possession recent. *Id*.

Bryant relies upon *Trotter v. State*, 838 N.E.2d 553 (Ind. Ct. App. 2005) in arguing that the State's evidence is insufficient to support his conviction for auto theft. In *Trotter*, this court noted that the unexplained possession of stolen property may be sufficient evidence to prove theft if the State could prove that the theft was recent. The *Trotter* court further noted that where a considerable length of time has elapsed between the theft and the time of arrest, the State must show the defendant had exclusive possession of the property during that time. Nonetheless, even where the lapse of time is considerable, the State may still prove exclusive control by showing that the defendant was in possession of the property shortly after the theft. *Id*. (citing *Muse v. State*, 419 N.E.2d 1302 (Ind. 1981) (receipts and vouchers in stolen vehicle bearing the defendant's name and dated before the arrest sufficient to support inference that defendant stole property)).

This case is distinguishable from *Trotter*. In *Trotter*, the defendant was in possession of a vehicle stolen five days prior to his arrest.[2] In this case, Bryant was in possession of the stolen vehicle within, at most, hours of it being stolen. This evidence by itself is sufficient to infer actual theft. *See Buntin v. State*, 838 N.E.2d 1187. Further, even though there were no eyewitnesses, all of the evidence supports the reasonable conclusion that Bryant stole Meeks's mini-van. At 9:00 a.m. on January 31, Meeks saw his mini-van at his farmstead in Wells County. That afternoon, the mini-van was missing. Stinson saw a blue mini-van being towed on a trailer one-eighth of a mile from Meeks's farmstead on January 31. The Hericks

[2] Ultimately, the *Trotter* court reversed the defendant's conviction for auto theft because the State had failed to present evidence to show that the defendant was the original thief, rather than merely exercising control over a stolen vehicle.

testified that they also saw a trailer with a mini-van on top around 1:30 or 1:45 p.m. on January 31. Craft and Madeline testified that on January 31, Bryant arrived at Clark's salvage yard pulling a trailer carrying a blue mini-van. Madeline paid Bryant $152.00 for the mini-van and the time stamped on the case ticket was 2:18 p.m. Lieutenant Betz confirmed that the blue mini-van Bryant delivered to Clark's salvage yard belonged to Meeks. Lieutenant Betz also determined that one could easily travel from the location where the Hericks spotted the mini-van in tow to Clark's salvage yard in the short time between 1:30 p.m. and 2:18 p.m. From this evidence, a reasonable trier of fact could conclude beyond a reasonable doubt that Bryant stole Meeks's mini-van and intended to deprive Meeks of its value or use. This court will not reweigh the evidence.

Judgment affirmed.

MAY, J., and BRADFORD, J., concur